

## **REMARKS**

Applicant wishes to thank the Examiner for the consideration given this case to date. Applicant has now had an opportunity to carefully consider the Examiner's action, and respectfully submits that the application, as amended, is now in condition for allowance. Claims 1-15 were filed with the application and remain pending.

### **THE EXAMINER'S ACTION**

In the Office Action dated July 21, 2004, the Examiner:

rejected claims 1-5 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,226,906 to Bar-Yona in view of U.S. Des 421,722 (Chang);

rejected claims 6-7 and 9-15 under 35 U.S.C. § 103(a) as being unpatentable over Bar-Yona, as modified, and further in view of U.S. Patent No. 4,912,586 to Herron;

rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Bar-Yona and Chang, and further in view of U.S. Patent No. 5,995,455 to Kutosky.

### **REJECTIONS UNDER 35 U.S.C. § 103(a)**

Claims 1-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,226,906 to Bar-Yona (Bar-Yona) in view of U.S. Des. 421,744 to Chang (Chang). Because there is no suggestion or motivation to make the combination as attempted by the Office, and because the proposed modification would render the prior art unsatisfactory for its intended purpose, Applicant requests reconsideration and withdrawal of the present rejection.

The Office concedes that the Bar-Yona reference fails to teach the shaped base portion as called for in claim 1. The Office proposes combining the teachings of Chang to remedy this shortcoming. However, the Bar-Yona reference utterly fails to disclose any device amenable to oscillation upon external urging, a rocking frame, or a non-powered rocking base. Indeed, Applicant was unable to discern any teaching in Bar-Yona of a non-powered lenticular lens display. Applicant respectfully directs the Office's attention to Bar-Yona Reference Numeral 14 (electrically powered drive means), and 34 (electronic oscillator powered by battery).

Similarly, even assuming that Chang discloses the shaped base portion as claimed (which it manifestly does not – claim 1, for example, calls for the shaped base portion to support the

image and the information display). There is simply no motivation to make the combination as suggested by the Office. The Office has merely used Applicant's claims as a roadmap for piecemeal assembling of various elements. This is quintessential hindsight. It is impermissible.

Additionally, the combination proposed by the Office is improper as it would render the Bar-Yona reference unsatisfactory for its intended purpose (MPEP 2143.01). In order for the lenticular display disclosed by Bar-Yona to meet its intended purpose, the image card behind the lenticular display is mechanically moved between two positions. The image viewed through the lenticular lens thus changes depending on the position of the mechanically moved card. If the teachings of Chang were to be combined with Bar-Yona, the viewed image would appear to change based on both the mechanical movement and the rocking movement. Thus, the viewed image would change erratically or, in some circumstances, not at all, due to the combined movements.

Regarding claims 6, 7, and 9-15, the Office rejected the claims under Bar-Yona in light of U.S. Patent 4,912,586 to Herron (Herron). Here the Office concedes that Bar-Yona fails to disclose the weight distribution as claimed. For example, claim 7 calls for, among others, a frame including a top half and a bottom half, the top half including more than fifty per-cent of a total weight of the clock.... In this case none of the applied references teaches each and every element of the claims.

In Herron, and in fact the other references cited, the weighted portions are not consistently placed and appear to most predominantly favor moving weight lower. See, for example, Herron col. 2, ln. 49-55 "a center mass spaced from the longitudinal axis"; and "lead weights positioned on the interior surface of the lower portion of the shelf;" U.S. Patent 5,169,354 col. 1, ln. 50 "the eccentric weight of the bell to rotate to the lowest available position relative to the support surface"; and U.S. Patent 6,165,041 col. 2, lns. 10-12 "the seat is provided toward an inner bottom center with a fixedly connected weight".

Claims 13 and 14 have been rejected asserting Bar-Yona "as modified." Applicant can not determine what modification the Office is proposing to render these claims unpatentable. Regardless, the Office's conclusion that "the power supply would also constitute a portion of the weight on the bottom" directly contradicts the claim language employed. Specifically, the claim

recites that a higher weight percentage be located at the top. Thus, Applicant requests withdrawal of this rejection.

The Office has rejected claim 8 asserting Bar-Yona and Chang in light of U.S. Patent 5,995,455 to Kutosky (Kutosky). The Office admitted the primary references failed to teach an alarm settable to sound at a determined time and immediately upon user interaction. To remedy the shortcoming, the Office refers to the on/off switch of Kutosky.

For clarity, claim 8 calls for an alarm settable to sound at a determined time and immediately upon user interaction. Use of the conjunctive “and” signals both elements are claimed and a prior art reference must supply both to serve as a proper basis of rejection. Here, Applicant was unable to discover any teaching in Kutosky of an alarm that would sound immediately upon user interaction. The Office referred to Figure 3 and specifically indicated an on/off switch, Reference Numeral 80. Contrary to the Office’s assertion, Reference Numeral 80 supplies but one condition necessary for the alarm to sound. The second condition is that the display reach the “primary alarm time” as discussed in col. 5, lns. 34-40. In other words, toggling on/off switch 80 enables the alarm to sound at a determined time, but does not result in the alarm sounding immediately.

Thus, because there is no suggestion in the references of record to make the combination proposed by the Office, and because the combination would render the prior art unsatisfactory for its intended purpose, and because the references fail to teach the claimed limitations, Applicant requests reconsideration and withdrawal of the rejections of claims 1-15 under 35 U.S.C. § 103(a).

### **PROCEDURAL MATTERS**

Applicant requests an indication that the formal drawings filed on May 28, 2002 have been received and are acceptable.

Additionally, upon filing the Application, Applicant filed a two page Information Disclosure Statement containing patent references on page one and non-patent references on page two. To date, Applicant has received back an Examiner initialed copy of only page one. Applicant requests evidence that the references contained on the non-patent page of the IDS have been considered.

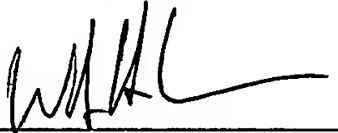
### CONCLUSION

For the foregoing reasons, Applicant respectfully asserts that the case is now in a condition for allowance. While no additional fees are believed due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-2051, identifying our Docket No. 24637-5.

Respectfully submitted,

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By:



W. Scott Harders  
Registration No. 42,629

BENESCH, FRIEDLANDER  
COPLAN & ARONOFF LLP  
2300 BP Tower  
200 Public Square  
Cleveland, OH 44114-2378  
(216) 363-4443